

MISSISSIPPI STATE BOARD OF PUBLIC ACCOUNTANCY

ADMINISTRATIVE PROCEDURES RULES

I. METHOD OF OPERATION

1. Scope. This section is promulgated pursuant to Mississippi Code of 1972, Section 25-43-2.104 of the Administrative Procedures Law.

2. Description of the Mississippi State Board of Public Accountancy. Title 73, Chapter 33, of the Mississippi Code of 1972, gives the State Board the authority to adopt *Rules and Regulations* for the purpose of carrying out its provisions. Section 73-33-5(f) of the act assigns this duty of the Board:

To adopt and enforce such rules and regulations concerning certified public accountant examinee and licensee qualifications and practices and certified public accountant firm permits and practices as the board considers necessary to maintain the highest standard of proficiency in the profession of certified public accounting and for the protection of the public interest. The standards of practice by certified public accountants and certified public accountant firms shall include generally accepted auditing and accounting standards as recognized by the Mississippi State Board of Public Accountancy.

The purpose of the *Rules and Regulations* is to promote and protect the public interest by implementing the Mississippi accountancy statutes, to better define and more clearly specify portions thereof for the guidance of certified public accountants, certified public accountant firms, those persons who rely upon the services of certified public accountants, and applicants for licensure as certified public accountants and permits as certified public accountant firms.

The public interest warrants the licensing and regulation of persons and firms who practice public accounting. A distinguishing mark of a certified public accountant is his or her acceptance of responsibility to the public. The reliance of the public, the government and the business community on sound financial reporting and advice on business affairs and the importance of these matters to the economic and social aspects of life impose particular obligations on certified public accountants. A person who practices public accounting is presumed to have accepted an obligation to uphold its principles, to work for increased knowledge and to abide by the Mississippi Public Accountancy Act, and regulations promulgated thereunder.

3. Where and How the Public may Obtain Information. The Board *Rules and Regulations*, as well as information regarding the Board meetings and regulatory requirements, may be obtained by visiting the Board's website at www.mspbpa.state.ms.us. Requests for declaratory opinions may be made pursuant to Part III of these administrative procedure rules. Otherwise, requests made pursuant to and in accordance with the Mississippi Public Records Act may be made by submitting written requests. Other requests for information, applications, requirements, complaints, fees and other inquiries may be made to:

Mississippi State Board of Public Accountancy
5 Old River Place, Suite 104
Jackson, Mississippi 39202-3449
Telephone - (601) 354-7320
Facsimile - (601) 354-7290
Web site - www.mspbpa.state.ms.us
Email - email@msbpa.state.ms.us

II. ORAL PROCEEDINGS ON PROPOSED RULES

1. Scope. This rule is promulgated pursuant to Mississippi Code of 1972 Section 25-43-3.104(2)(d) of the Administrative Procedures Law, and applies to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new rules and amendments to rules before the Board under Section 25-43-3.104.

2. When Oral Proceedings will be Scheduled on Proposed Rules. The Board will conduct an oral proceeding on a proposed rule or amendment if requested by a political subdivision, an agency, or ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed rule.
3. Request Format. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on a standard business letter-size paper (8½ inches by 11 inches). Requests may be in the form of a letter addressed to the Board, and must include the full name, telephone number, mailing address, and be signed by the requestor(s), unless represented by an attorney.
4. Notification of Oral Proceeding. The date, time, place of all oral proceedings shall be filed with the Secretary of State's office and mailed to each requestor. The oral proceeding will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State.

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5. Presiding Officer. The Executive Director, or his designee who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

6. Public Presentations and Participation. Public participation shall be permitted at oral proceedings in accordance with the following sections.

(a) At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.

(b) Persons wishing to make oral presentations at such a proceeding shall notify the Board at least three business days prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not previously contacted the Board.

(c) At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.

(d) The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(e) Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing. Written materials may, however, be submitted at the oral proceeding.

(f) There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion interrupt or end the participant's time where the orderly conduct of the proceeding so requires.

7. Conduct of Oral Proceeding.

(a) Presiding officer. The presiding officer shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall (i) call proceeding to order; (ii) give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by the Board for the

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proposed rule; (iii) call on those individuals who have contacted the Board about speaking on or against the proposed rule; (iv) allow for rebuttal statements following all participants' comments; (v) adjourn the proceeding.

- (b) Questions. The presiding officer, where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.
- (c) Physical and Documentary Submissions. Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Board, part of the rulemaking record, and are subject to the Board's public records request procedure.
- (d) The Board may record oral proceedings by stenographic or electronic means.

III. DECLARATORY OPINIONS

1. This rule is promulgated pursuant to Mississippi Code of 1972 Section 25-43-2.103(2) of the Administrative Procedure Law, and is intended to set forth the Board's rules governing the form and content of requests for declaratory opinions and the Board's procedures regarding the requests as required by Mississippi Code Section 25-43-2.103. These rules are intended to supplement and be read in conjunction with the provisions of the Mississippi Administrative Procedures Law, which may contain additional information regarding the issuance of declaratory opinions. In the event of any conflict between these rules and the Mississippi Administrative Procedures Law, the latter shall govern.
2. Persons Who May Request Declaratory Opinions. Any person with a substantial interest in the subject matter may make a request to the Board for a declaratory opinion by following the specified procedures. "Substantial interest in the subject matter" means: an individual, business, group or other entity that is directly affected by the Board's administration of the laws within its primary jurisdiction. "Primary jurisdiction of the agency" means the agency has a constitutional or statutory grant of authority in the subject matter at issue.

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3. Subjects Which May Be Addressed In Declaratory Opinions. The Board will issue declaratory opinions regarding the applicability to specified facts of: (1) a statute administered or enforceable by the Board, (2) a rule promulgated by the Board, or (3) an order issued by the Board. The Board will not issue a declaratory opinion regarding a statute or rule which is outside the primary jurisdiction of the agency.
4. Circumstances In which Declaratory Opinions Will Not Be Issued. The Board may, for good cause, refuse to issue a declaratory opinion. Without limiting the generality of the foregoing, the circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:
 - (a) the matter is outside the primary jurisdiction of the Board;
 - (b) lack of clarity concerning the question presented;
 - (c) there is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
 - (d) the statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
 - (e) the facts presented in the request are not sufficient to answer the question presented;
 - (f) the request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
 - (g) the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the rule, statute or order on which a declaratory opinion is sought;
 - (h) no controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute, rule, or order;
 - (i) the question presented by the request concerns the legal validity of a statute, rule or order;
 - (j) the request is not based upon facts calculated to aid in the planning of future conduct, but is, instead, based on past conduct in an effort to

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- establish the effect of that conduct;
- (k) no clear answer is determinable;
- (l) the question presented by the request involves the application of a criminal statute or sets forth facts which may constitute a crime;
- (m) the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
- (n) the question is currently the subject of an Attorney General's opinion request or the question has been answered by an Attorney General's opinion;
- (o) a similar request is pending before this agency or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law;
- (p) where issuance of a declaratory opinion may adversely affect the interests of the State, the Board, or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise;
- (q) the questions involves eligibility for a license, permit certificate or other approval by the Board or some other agency, and there is a statutory or regulatory application process by which eligibility for said license, permit, certificate or other approval would be determined.

5. Form of the Request for a Declaratory Opinion.

(a) **Written Requests Required.** Each request must be printed, typewritten or in legible handwriting. Each request must be submitted on standard business letter-size paper (8½ by 11"). Requests may be in the form of a letter addressed to the Board.

(b) **Where to Send Requests.** All requests must be mailed or delivered to the Board office. The request and its envelope shall clearly state that it is a request for a declaratory opinion. No oral, telephone requests or email requests will be accepted.

(c) **Name, Address and Signature of Requestor.** Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request. The signing party shall attest that the request

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complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any agency, administrative or judicial tribunal.

- (d) Single transaction. A request must be limited to a single transaction or occurrence.
 - (e) Question Presented. Each request must contain the following:
 - 1. a clear and concise statement of all facts relevant to the question(s) presented;
 - 2. a clear identification of the statute, rule or order at issue;
 - 3. the question(s) sought to be answered in the opinion, stated clearly;
 - 4. the identify of all other known persons involved in or impacted by the factual situation causing the request including their relationship to the facts, name, mailing address and telephone number;
 - 5. a statement sufficient to show that the person seeking relief has a substantial interest in the subject matter.
 - (f) The terms of the proposed opinion suggested by the requestor may be submitted with the request or may be requested by the agency;
 - (g) Memorandum of Authorities. A request may contain an argument by the requestor in support of the terms of the proposed opinion suggested by the requestor. The argument may be submitted in the form of a memorandum of authorities, containing a full discussion of the reasons and any legal authorities, in support of such position of the requestor. The Board may request that the argument and memorandum of authorities be submitted by any interested party.
6. Time for Agency's Response.
- (a) Agency's Response. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Board shall, in writing:
 - 1. issue an opinion declaring the applicability of the specified statute, rule, or order to the specified circumstances;
 - 2. decline to issue a declaratory opinion, stating the reasons for its action;or
 - 3. agree to issue a declaratory opinion or a written statement declining to issue a declaratory opinion, by a specified time but no later than ninety (90) days after receipt of the written request.
 - (b) When Period Begins. The forty-five (45) day period shall begin on the first State of Mississippi business day that the request is received by the Board.

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(c) Opinion Not Final for Sixty Days. A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the Board may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

7. Procedure After Request for Declaratory Opinion Received.

(a) Notice by Board. The Board may give notice to any person, agency or entity that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from persons, agencies or other entities other than the requestor.

(b) Notice by Requestor. The requestor, or his attorney, shall append to the request for a declaratory opinion a listing of all persons, with addresses, known to the requestor who may have an interest in the declaratory opinion sought to be issued, and shall mail a copy of the request to all such persons. The requestor or his attorney shall certify that a copy of the request was mailed to all such persons together with this statement: "Should you wish to participate in the proceedings of this request, or receive notice of such proceedings or the declaratory opinion issued as a result of this request, you should contact the Board within twenty days of the date of this request."

8. Hearings at the Discretion of the Agency.

(a) Provision for Hearing. If the Board in its sole discretion deems a hearing necessary or helpful in determining any issue concerning a request for a declaratory opinion, the Board may schedule such a hearing. Notice of the hearing shall be given to all interested parties unless waived. Notice mailed by first class mail seven (7) calendar days prior to the hearing shall be deemed appropriate.

(b) Proceedings at the Hearing. The procedure for conducting a hearing, including but not limited to the manner of presentation, the time for presentation, and whether and how evidence may be taken, shall be within the discretion of the Board.

(c) Persons Appearing at the Hearing. The Board shall allow the requestor to participate in any hearing. The Board may allow any other persons or entities to participate in the hearing.

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9. Public Availability of Requests and Declaratory Opinions. Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying at the expense of the viewer during normal business hours. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.
10. Effect of a Declaratory Opinion. The Board will not pursue any civil, criminal or administrative action against a person who is issued a declaratory opinion from the Board, and who, in good faith, follows the direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong. Any declaratory opinion rendered by the Board shall be binding on the Board and the person to whom the opinion is issued. No declaratory opinion will be used as precedent for any other transaction or concurrence beyond that set forth by the requesting person.